

**REMARKS**

The Official Action constitutes a final rejection of the claims. The Action and the references cited therein have been carefully reviewed. Favorable reconsideration and allowance of the claims are requested.

**I. Claim Status and Amendments**

Claims 1-21 presently appear in this application and stand rejected. No claims have been allowed. There are no amendments to the claims.

The pending claims define patentable subject matter warranting their allowance for the reasons discussed herein.

**II. Obviousness Rejection**

Claims 1-21 have again been rejected under 35 U.S.C. 103 (a) as being unpatentable over Moriga et al. (U.S. Patent Appln. Pub. No. 2002/0101043) in view of Klosowski et al. (U.S. Patent Appln. Pub. No. 2004/0122145) and Brinkman (U.S. Patent Appln. Pub. No. 2003/0232956) for the reasons set forth on pages 2-6 of the Official Action. This rejection is respectfully traversed. The arguments set forth in the response filed November 16, 2009 are reiterated herein by reference.

In the last response, Applicants argued that the rejection should fall, because the combination of Moriga et al., Klosowski et al., and Brinkman do not disclose or suggest a sealing gasket for closure, comprising a polyurethane elastomer

obtained by reacting the following (A), (B) and (C), and the resultant properties of such, because they do not disclose or suggest the feature of "a glycerin fatty acid ester having hydroxyl group(s), wherein said glycerin fatty acid ester is 0.1 to 20 parts by weight based on 1000 parts by weight of the polyol component (B)", which corresponds to element (C) of claims 1, 8, and 15. Yet, in maintaining the rejection, the Examiner argued that this noted feature of the claims can be easily derived from Klosowski et al. and Brinkman. Indeed, in the middle of page 3, the Examiner states that "Applicants' invention can be arrived at solely by selecting from the various choices disclosed by the references." Applicants respectfully disagree.

To start, it should be noted that Applicants have discovered that there are problems in the swell ratio and its odor absorption when using the sealing gasket for closure of Moriga et al. for alcoholic beverages. The present invention of the instant application was made to solve such problems. See the disclosure from line 3 on page 5 to line 16 on page 6 of the present application.

As to the primary reference of Moriga et al., the Examiner, at the bottom of page 2 of the Official Action, acknowledges that this reference "fails to disclose a glycerin fatty acid ester having hydroxyl groups as another reactant." Accordingly, the Examiner relies on the secondary references of

Brinkman and Klosowski et al. as allegedly disclosing this element of the claims. However, Applicants again respectfully submit that the secondary references, even when combined with Moriga et al., fail to disclose or suggest this feature of the claims, and thus, the cited references cannot disclose the claimed sealing gasket for closure, comprising a polyurethane elastomer obtained by reacting the following (A), (B) and (C), and the resultant properties thereof.

Klosowski et al. does not relate to a sealing gasket for closure, and it is not made under the assumption of application for food. Similarly, Brinkman relates to a hot melt adhesive and has a completely different technical field from the sealing gasket for closure. Furthermore, Klosowski et al. and Brinkman are both directed to improving the adhesiveness, and they are not focused on the swell ratio and its odor absorption for alcoholic beverage. In view of the above, it is believed that the skilled artisan would not refer to Klosowski et al. and Brinkman to solve the problems of the swell ratio and its odor absorption when using sealing gasket for an alcoholic beverage. In addition, even if Klosowski et al. and Brinkman are referred, there is no statement or suggestion for solving the above problem by employing the above-mentioned feature, which corresponds to element (C) of claim 1. For these reasons, Applicants respectfully submit that there would be no reason for the skilled

artisan to modify the teaching in Moriga along the lines of Klosowski et al. and Brinkman to arrive at the claims. Thus, contrary to the Examiner's position, Applicants' invention cannot be arrived at solely by selecting from the various choices disclosed by the references, because there would be no reason for combining the references in the manner suggested by the Examiner.

Thus, contrary to the Examiner's position, it is respectfully submitted that the above-mentioned feature, which corresponds to element (C) of the claims, cannot be easily derived from Klosowski et al. and Brinkman, even when combined with Moriga.

Further, even assuming that the Office has established a *prima facie* case of obviousness (which it has not) it is well settled that *prima facie* obviousness can be rebutted by the showing of unexpected results. See MPEP, 8<sup>th</sup> edition, revision 7 (July 2008) at §716.02(a) I-IV and §2145. Again, it is believed that the sealing gasket for closure according to the claims has the unexpected and surprising properties of one or more selected from the group consisting of: (i) low swelling with an alcoholic beverage; (ii) low absorption of the odor of an alcoholic beverage; (iii) toughness; and (iv) no yellowing.

Yet, in maintaining the rejection, the Examiner has argued that "applicants failed to provide any data relating to improvement in low swelling with an alcoholic beverage, low

absorption of the odor of an alcoholic beverage, toughness, and no yellowing." Applicants disagree and respectfully submit that at least the advantages regarding "low swelling with an alcoholic beverage" and "low absorption of the odor of an alcoholic beverage" are readily supported by the examples in the instant application (see for instance, table 1 on page 27 of the present application, etc.).

Again, the combination of Brinkman, Moriga et al. and Klosowski et al. do not disclose or suggest these features of the claims. Brinkman, Moriga et al. and Klosowski et al. do not disclose such benefits. Nor do the references disclose or suggest a compound achieving such properties or how to produce such a compound. Accordingly, it is believed that the sealing gasket for closure of main claims 1, 8, and 15 achieves unexpected and surprising properties that cannot be achieved or predicted by the combined teachings of Brinkman, Moriga et al. and Klosowski et al. It is respectfully submitted such unexpected properties are further evidence of the non-obviousness of the claims.

For these reasons, Applicants respectfully submit that the combined teachings of Brinkman, Moriga et al. and Klosowski et al. fail to disclose or suggest each and every element of main claims 1, 8, and 15. The claimed invention also achieves surprising and unexpected properties over anything that could be

expected from the combined teachings of the cited prior art references. Thus, claims 1, 8, and 15 are believed to be novel and unobvious over the combined teachings of Brinkman, Moriga et al. and Klosowski et al. The same arguments are applicable to dependent claims 2-7, 9-14, and 16-21, as these claims all dependent either directly or indirectly, on independent claims 1, 8, and 15. Thus, withdrawal of the rejection is therefore requested.

### **III. Conclusion**

Having addressed all the outstanding issues, this paper is believed to be fully responsive to the Office Action. It is respectfully submitted that the claims are in condition for allowance, and favorable action thereon is requested.

If the Examiner has any comments or proposals for expediting prosecution, please contact the undersigned attorney at the telephone number below.

Respectfully submitted,

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